

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GARY LIPSEY,

Plaintiff,

v.

SGT. RICHARD SHULTZ, et al.,

Defendants.

CASE NO. C16-5264 RBL-KLS

ORDER DENYING PLAINTIFF'S
MOTION FOR THE APPOINTMENT
OF COUNSEL

Plaintiff Gary Lipsey moves for the appointment of counsel. Dkt. 13. Having carefully reviewed the motion and balance of the record, the Court finds that the motion should be denied.

DISCUSSION

No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). *See also United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is discretionary, not mandatory.”) However, in “exceptional circumstances,” a district court may appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether exceptional

1 circumstances exist, the court must evaluate both “the likelihood of success on the merits [and]
2 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal
3 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting
4 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show he
5 has an insufficient grasp of his case or the legal issue involved and an inadequate ability to
6 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d
7 1101, 1103 (9th Cir. 2004).

8 Mr. Lipsey requests the appointment of counsel because he is indigent and incarcerated,
9 he has limited access to the law library and other resources, and he believes counsel is better able
10 to present evidence and testimony at trial. Dkt. 13. This case does not involve complex facts or
11 law and Mr. Lipsey has shown an ability to articulate his claims in a clear fashion understandable
12 to the Court. In addition, Mr. Lipsey does not show that he is likely to succeed on the merits of
13 his case.

14 Accordingly, it is **ORDERED**:

15 (1) Plaintiff’s motion for counsel (Dkt. 13) is **DENIED**.

16 (2) The Clerk shall send a copy of this Order to Plaintiff and counsel for Defendants.

17 Dated this 18th day of July, 2016.

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20 Karen L. Strombom
21 United States Magistrate Judge
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